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Canada. Parliament. House of  
Commons. Standing Committee on  
Veterans Affairs. Committee to  
Survey the Work and Organization  
of the Canadian Pension Commission.  
Report- 1969-70



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HOUSE OF COMMONS

CANADA

Parliament

REPORT

of the

STANDING COMMITTEE

ON

Veterans Affairs

of the

HOUSE OF COMMONS

on

THE REPORT OF THE COMMITTEE

TO SURVEY THE WORK AND ORGANIZATION  
OF THE CANADIAN PENSION COMMISSION



Presented by

LLOYD FRANCIS, Esq., Chairman

SESSION 1969-70





HOUSE OF COMMONS  
CANADA

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*of the*  
STANDING COMMITTEE  
ON

Veterans Affairs

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HOUSE OF COMMONS  
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THE REPORT OF THE COMMITTEE  
TO SURVEY THE WORK AND ORGANIZATION  
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## MEMBERS OF THE STANDING COMMITTEE ON VETERANS AFFAIRS

*Chairman:* Mr. Lloyd Francis

*Vice-Chairman:* Mr. Carl Legault

and Messrs.

Badanai,	Knowles ( <i>Winnipeg</i>	Marshall,
Bigg,	<i>North Centre</i> ),	Ouellet,
Douglas ( <i>Assiniboia</i> ),	Laniel,	Peters,
Émard,	Lessard ( <i>Lac Saint-</i>	Tétrault,
Foster,	<i>Jean</i> ),	Thomas ( <i>Moncton</i> ),
Knowles ( <i>Norfolk-</i>	MacEwan,	Turner ( <i>London East</i> ),
<i>Haldimand</i> ),	MacRae,	Whicher—(20)


D. E. Levesque,  
*Clerk of the Committee.*

## OTHER MEMBERS WHO SERVED ON THE COMMITTEE DURING THE CONSIDERATION OF THE "WOODS REPORT":

Messrs. Borrie, Cullen, Groos, Guay (*St. Boniface*), Hopkins, Howard (*Okanagan Boundary*), Latulippe, Mahoney, Marceau and Saltsman.

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On Wednesday, October 29, 1969, your Committee received the following Order of Reference:

"That the report of the Committee appointed September 8, 1965, to survey the organization and work of the Canadian Pension Commission, tabled on March 26, 1968, and the evidence adduced by the Standing Committee on Veterans Affairs in its study of the aforementioned matter during the First Session of the Twenty-Eighth Parliament, including the White Paper on Veterans Pensions, be referred to the Standing Committee on Veterans Affairs."

During the First Session of the Twenty-Eighth Parliament, your Committee held twenty-three meetings and heard evidence from the following witnesses on the aforementioned matter. The witnesses heard were from:

1. *The Department of Veterans Affairs:*  
The Honourable J. E. Dubé, Minister  
Dr. J. S. Hodgson, Deputy Minister  
Mr. D. K. Ward, Chief Pensions Advocate  
Mr. E. J. Rider, Director, Welfare Services
2. *The Canadian Pension Commission:*  
Mr. T. D. Anderson, Chairman  
Mr. J. M. Forman, Deputy Chairman
3. *The Nationally Chartered Veterans Organizations:*  
Mr. Robert Kohaly  
Mr. D. M. Thompson  
Mr. H. C. Chadderton
4. *The National Council of Veterans Association in Canada:*  
Mr. J. C. Lundberg, Chairman  
Mr. H. C. Chadderton
5. *The War Amputations of Canada:*  
Colonel S. E. Lambert, President  
Mr. Keith Butler, Vice-President  
Mr. H. C. Chadderton, Executive Secretary  
Mr. Justice K. L. Crowell  
Mr. Harry Worling  
Mr. S. J. Alderdice  
Mr. A. J. Lemay  
Mr. Paul Bédard
6. *The Hong Kong Veterans Association of Canada:*  
Mr. C. P. Brady, President  
Mr. John Stroud, Vice-President  
Mr. Maurice D'Avignon, President, Quebec-Maritimes Branch  
Mr. Robert Manchester, President, British Columbia Branch  
Mr. Howard Donnelly, President, Northern Alberta Branch  
Mr. Peter L. MacDougall, Ottawa Branch

7. *The National Dieppe Prisoner of War Association:*

Mr. Georges Giguère, President

8. *The Nursing Sisters' Association of Canada:*

Miss Margaret Reynolds, President

Miss Kathleen Christie

Miss Evelyn Pepper

Miss D. Lodge

Miss N. Kennedy-Reid

Miss G. Johnson

Mrs. M. MacDermott

Major Jessie Urquhart

9. *The Canadian Corps Association:*

Mr. Leslie Crooks, First Vice-President

Mr. H. C. Chadderton, Honorary Vice-President

Mr. E. J. Parsons, Pensions Advocate

Mr. John Stroud, Resolutions Chairman

Mrs. Shirley Wood Heesaker, Honorary Secretary

10. *The Canadian Paraplegic Association:*

Mr. G. K. Langford, Q.C. Managing Director

Mr. A. C. Clarke, Assistant Managing Director

Mr. Anthony Damiano, Special Witness

11. *The Sir Arthur Pearson Association for War Blinded:*

Mr. Chris Davino, President

Mr. F. J. L. Woodcock, Executive Secretary

Mr. H. C. Chadderton, Honorary Life Member

12. *The War Pensioners of Canada:*

Mr. M. W. Campbell, President

Mr. John Black, Past-President

Mr. R. W. Dawson, First Vice-President

Sister Agnes Lizmore, Honorary Secretary

13. *The Army, Navy and Air Force Veterans in Canada:*

Mr. J. C. Lundberg, Dominion President

Mr. H. C. Chadderton, Acting Secretary

14. *The Royal Canadian Legion (Dominion Command):*

Mr. Robert Kohaly, Dominion President

Mr. Arthur Adams, Second Vice-President

Mr. Donald M. Thompson, Dominion Secretary

Mr. Murray MacFarlane, Director, Service Bureau.

In the course of its continued study, respecting the "Woods Committee Report" in the Second Session of the Twenty-Eighth Parliament, your Committee held sixteen meetings and heard additional evidence from:

The Honourable J. E. Dubé, Minister of Veterans Affairs

Officials of the Department of Veterans Affairs

The Royal Canadian Legion (Dominion Command)

The National Veterans Organization of Canada

The National Presidents of Veterans Organizations in Canada.

Your Committee wishes to express its appreciation to all Veterans Organizations for their excellent briefs, and to all those who presented evidence.

Your Committee is grateful to The Honourable John Turner, Minister of Justice, and to Mr. D. S. Maxwell, Deputy Minister, for the services of Mr. P. E. Reynolds, Director of Legal Services, Department of Veterans Affairs, who was loaned to the Committee as Director of Research and Special Assistant.

Your Committee wishes to extend its sincere appreciation to Mr. Reynolds who so greatly assisted the Committee in the performance of its duties, and to Mr. Del Levesque who served the Committee as Clerk, and to Mr. D. K. Ward, Chief Pensions Advocate, for his excellent explanation of the White Paper proposals.

In view therefore of the present status of, and having completed its inquiry pursuant to the said Order of Reference, your Committee reports:

Your Committee examined in detail each of the 148 recommendations of the Woods Committee, and also the proposals contained in the White Paper on Veterans Pensions.

Many of the recommendations did not involve legislative changes, and indeed a number were not controversial, being acceptable to the Department of Veterans Affairs and the Canadian Pension Commission as well as to veterans' spokesmen. In regard to those recommendations on which some differences were noted in testimony, your Committee has suggestions for your consideration.

The Government's White Paper on Veterans Pensions was of great assistance in reducing the work of your Committee. Many of the proposals contained in it were welcomed by spokesmen for all veterans groups. These included the provisions affecting Hong Kong veterans, the clarification of the "benefit of doubt", the proposal to restructure the Veterans' Bureau, and the modification of the Pension Act in respect of legal damages. Your Committee is pleased to endorse these proposals, with some minor changes. These will require new legislation which it is hoped will be introduced in Parliament as soon as possible.

In respect of other areas, on which disagreement was noted, your Committee has a number of suggestions for consideration.

One of the items that recurred throughout our hearing related to the basis for determining the monetary quantum of 100% disability pension. The Woods Report (Recommendation 63) recommended that the pension rate should continue to be related to the earning power of an untrained labourer. Spokesmen for veterans groups alleged that since World War I the pension rate had always been related to the Salary of a Cleaner and Helper in the Public Service and should continue to be. Representations made to the Woods Committee alleged that adjustments to the basic pension rate had actually been made from time to time which had the result of bringing it up to Cleaner and Helper rate.

The Committee was unanimous in expressing the opinion that the pension rate should continue to be related to the earning power of an untrained labourer.

The case for additional pension for those severely disabled or suffering from multiple disabilities was very strong. In particular, some witnesses who appeared before the Committee gave evidence of hardship in their own family living because of the limited income available to them. However, because of the concern for the integrity of the principle of assessing a man's disability on his ability to compete in the untrained labour market, many members of the Committee had difficulty in subscribing to the concept of going beyond 100% in measuring physical disability.

Both the Woods Committee and the White Paper issued by the Department of Veterans Affairs recognized the special and additional requirements of those suffering from severe or multiple disabilities. Accordingly, your Committee recommends that additional payments be made to certain categories of veterans whose eligibility would be determined by regulation, in the categories of multiple or severe disabilities. These additional payments should be paid as a matter of right, and should be on a scale higher than that suggested in the White Paper. The details of your Committee's recommendations are set out under Recommendations 64 and 65.

Your Committee was also concerned about the ceiling of \$3,000 now applying to attendance allowances. No changes have been made in these maximum amounts since 1964. In view of the increasing costs of these services, we recommend that these be reviewed by the Government.

Your Committee also spent considerable time reviewing the appeal procedures suggested on the one hand by the White Paper and on the other hand by the Veterans' Associations, which were essentially modifications and extensions of the Woods recommendations. We were very much concerned about the principle of an independent review board being stacked on top of an independent Pension Commission. This appeared to us to raise a fundamental question of public administration, but the representations by the Veterans' Associations were strong, persistent and undeviating on this point. In the circumstances, we are recommending that the procedure essentially recommended by the Veterans' Associations in the final hearings in April of this year should be adopted with some modification. The particulars of your Committee's recommendations are contained in Recommendation 14.

Your Committee has reservations, however, concerning the observations of the Veterans' Associations on the ability of the Canadian Pension Commission to delegate responsibility to field staff and also on the suggestion that a single Commissioner should be able to make decisions. In our opinion, decisions should be signed by more than one Commissioner in the interests of uniformity of administration.

Without delegation to field staff and to one Commissioner, your Committee doubts if 12 Commissioners would be able to cope with the workload. It considers that, during the first two or three years of the operation of the Pension Review Board, if there is no delegation as proposed, it may be necessary to appoint additional *ad hoc* Commissioners and supporting staff.

It is impossible at this time to foresee the operations of the Pension Review Board with any degree of certainty or to forecast with any accuracy the number of claims which will come before the Board and the Commission for adjudication in the future. Your Committee therefore suggests that the organization, establishment and procedure of both the Review Board and the Commission be reviewed after five years. For these reasons your Committee considers that appointment of Commissioners for a specific term is preferable to a life appointment.

Recommendation is made (Woods Recommendation 106) to pay pension to widows of pensioners who were being paid at rates of 48% or less.

Finally, we were concerned with the principles behind the suggestion for automatic age increases. These were considered at some length, but the Committee was unable to accept the recommendations of the Veterans' Associations in this area.

In the section that follows we comment on the Woods Committee Resolutions in the order in which they are presented.

Your Committee has prepared its Report in two parts.

Part I contains the Woods Committee Recommendations as modified in some cases by the White Paper and in other cases by the proposals made by the National Veterans Organizations of Canada which your Committee recommends for implementation.

Part II contains the Woods Committee Recommendations which your Committee does not recommend for implementation.

## PART I

Your Committee, therefore, recommends that the following Woods Committee recommendations as modified in some cases by the White Paper and in other cases by the proposals made by the National Veterans Organizations of Canada be implemented.

### *Recommendation 1*

That the final determination of interpretation of the Pension Act be vested in the Pension Review Board as proposed in Recommendation 14.

### *Recommendation 2*

That the Canadian Pension Commission decide initial interpretations at its discretion. This is now in effect and no further action is required.

### *Recommendation 3*

That a Commissioner may request the Pension Review Board to interpret any clause of the Pension Act.

### *Recommendation 4*

That the Pension Commission, the Chief Pensions Advocate, or Advocates of a recognized Veterans Organization, may request an interpretation of any provision of the Pension Act by the Pension Review Board.

### *Recommendation 5*

That the Pension Commission issue pension law directives, providing interpretations in respect of various sections of the Pension Act.

### *Recommendation 6*

That the Pension Commission establish a system of personal hearings to resolve disputes regarding the quantum of pensions under the existing authority of section 7(3) of the Pension Act.

That in connection with these hearings the following principles be followed:

- (a) The responsibility for granting personal hearings remain that of the Commission Chairman;
- (b) That the procedure be as simple as possible, and hearings be held at frequent intervals in all Districts;
- (c) All evidence be taken under oath, and a record be kept;
- (d) Frequent use be made of the authority to conduct these hearings by one Commissioner;
- (e) Where more than one Commissioner forms a body to hear the complaint, the decision be made by a quorum. Where the complaint has been heard by a single Commissioner, the decision be made by the Commission on the basis of a written report.

### *Recommendation 7*

That if an applicant is dissatisfied with the decision rendered after a section 7(3) hearing he has the right to appeal to the Pension Review Board.

### *Recommendation 8*

That the Commission publish a directive governing personal hearings in matters of quantum.

### *Recommendation 9*

See Part II.

### *Recommendation 10*

That the provision for personal hearings be removed from the "Organization section" of the Act and be placed in sequence with the sections dealing with application procedure.

### *Recommendation 11*

This recommendation provides that the function of section 7(3) hearings be enlarged to include disputes concerning discretionary benefits. This recommendation is not necessary as disputes regarding discretionary benefits may be adjudicated by the Entitlement Boards proposed in Recommendation 13.

### *Recommendation 12*

That the following "three stage" application procedure be adopted for all types of service:

- (a) First application;
- (b) Second application;
- (c) Renewal application and further renewal applications in the discretion of the Commission.

In order to make this recommendation apply equally to all World War I applicants, section 15 of the Pension Act should be repealed. This section provides that, in respect of military service during World War I, a pension shall not be awarded unless application was made before July 1st, 1936 in the case of a member of the forces who did not serve in a theatre of actual war.

### *Recommendation 13*

That the existing system of Appeal Boards be retained in effect and be named "Entitlement Boards" which would provide personal hearings in regard to requests for entitlement and the discretionary benefits under the Pension Act.

### *Recommendation 14*

The Woods Committee recommended the establishment of a Pension Appeal Board. As an alternative the White Paper proposes to provide an appellate procedure by means of restructuring the Commission and the establishment of a Directorate of Pensions within the Department to which would be transferred the entire staff of the present Commission except the Chairman, Deputy Chairman, the present Commissioners and the Appeal Administrative staff. The initial stages of adjudication and the administration of the Pension Act would be done by this Directorate.

The Chairman, Deputy Chairman, and the Commissioners would be formed into three Divisions:

- (1) The Entitlement Hearing Division which would consist of 10 Commissioners and their immediate secretarial staff. The function of this Division would be to provide opportunities for applicants who are not satisfied with the adjudication of the Directorate of Pensions to appear personally with their advocates and witnesses. This Division would provide for hearings at the main centres across Canada in the same manner as is now arranged for the Appeal Boards.

Applicants dissatisfied with the adjudication of the Entitlement Hearing Division would have the right to appeal to the Appeal Division.

- (2) *Appeal Division.* This Division would consist of a Chairman and up to five Commissioners. It would function as a final court of appeal for pension claims and would be the final authority on the interpretation of pension legislation.

It would be based permanently in Ottawa. Pension applicants would not normally appear before this Division, but they would have the right to be represented by an advocate.

- (3) *The Administrative Division.* This Division would operate as part of the Appellate Division.

The National Veterans Organizations of Canada in their evidence given to your Committee have emphatically stated that Veterans Organizations are unanimously opposed to the restructuring of the existing Commission and the establishment of a Directorate of Pensions on the ground that it does not provide for the resolution of disputes in respect of matters arising out of the Pension Act before an independent body.

The Veterans Organizations of Canada made the following proposal to your Committee:

"It is proposed that the Government establish a Pension Review Board as a separate entity outside of the Pension Commission to serve as an appellate body. The following principles would apply:

- (a) To consist of a chairman and four members. One of the four may be appointed from among existing members of the Canadian Pension Commission.
- (b) To be an autonomous body, reporting to Parliament through the Minister of Veterans Affairs.
- (c) To be responsible for:
  - (i) Final interpretation of the Pension Act,
  - (ii) Final disposition of appeals on all matters.
- (d) The procedure for appellate review would be based on a review of documents only, with the proviso that the Board could call the applicant or his representative. Accredited representatives would include advocates of the Veterans' Bureau, Service Officers of Veterans' Organizations and Members of Parliament.
- (e) Normally, an application for review of a decision would be made by the applicant or his representative in writing. This application would be accompanied by a written submission stating the reasons why the claim should succeed.
- (f) The Board would be authorized to initiate such investigation or seek medical and legal advice as deemed necessary.
- (g) It would seem that this type of review board could operate with a small staff and could act quickly. It could be housed in the same building as the Commission but in a different location within the building.
- (h) In making appointments to this Review Board the guidelines as set out in Woods Committee Recommendation No. 132 should be followed.

- (i) The Chairman of the Review Board should adopt quality control and standardization procedures as set out in the Woods Committee Recommendations Nos. 135 and 136.
- (j) Appointments to the Review Board should be for life tenure to age 70, provided that the Chairman or a member may be removed by Order in Council for cause.
- (k) The Chairman should have authority for appointment of staff in the manner as set out in Woods Committee Recommendation No. 14(z).

The Canadian Pension Commission would continue to be responsible for adjudication of all matters at First, Second and Renewal Hearings, as well as other routine matters, including discretionary awards, additional pension for dependents, burial grants, etc. However, if certain recommendations of the Woods Committee are adopted it would be possible, we believe, to reduce the establishment of the Commission from the present 17 members to 12.

With the enactment of Recommendations Nos. 23 and 25a relating to the presumption of the medical condition of a member of the Forces on enlistment and the benefit of doubt, some acceleration of decisions at the initial level of adjudication can be expected, and there should also be a reduction in the number of claims that proceed to appeal.

The Woods Committee recommended (No. 30):

‘That, First, Second and Renewal applications for entitlement be approved or rejected by an individual Commissioner acting in the capacity of an “Entitlement Officer”, thus providing that such Commissioner be empowered to act for the Commission in the disposal of such applications.’

Under the present legislation it is necessary for two Commissioners to sign all decisions. Obviously, by adopting Recommendation No. 30 to permit a single Commissioner to dictate and sign a decision there would be a considerable saving in time and manpower. In this regard it should also be noted that the Woods Committee recommended (No. 17) that a Commissioner who signs a decision should still be free to adjudicate at an Entitlement Board Hearing.

The Woods Committee also recommended (Nos. 48-60) that the Pension Commission delegate authority to Senior Pension Medical Examiners in the District Offices and to the Claims and Review Branch to adjudicate on many matters which now require action by two Commissioners. Statistical information indicates that during the last fiscal year nearly 25,000 out of 38,000 decisions of the Commission were on other than entitlement matters.

By adopting the recommendations of the Woods Report referred to above, we believe that most of the nonentitlement decisions could be handled by personnel other than the Commissioners. The Commission staff already prepares such cases for formal decision by the Commissioners, and we do not believe that additional personnel should be required to resolve such matters. A significant amount of the present routine workload would, therefore, be removed from the Commissioners, freeing them for more

important matters, while also permitting an actual reduction in the overall number of Commissioners required to handle the case work.

The Recommendations (Nos. 20, 21 and 22) of the Woods Committee relating to Leave to Reopen will, if adopted, result in a more simplified and less time-consuming procedure. These recommendations propose that Leave to Reopen not be required for a new condition; that it be waived for applications based on (i) presumption, and (ii) entitlement—Regular Force, and that Leave to Reopen may be granted on the authority of one Commissioner instead of three, as presently required.

The function of the proposed Pension Review Board is seen as basically one of review involving the use of existing files and records. There would normally be no requirement for personal presentation by the advocate as the applicant would have been extended the full advantages of due process, including a personal hearing and presentation on his behalf by his advocate at the Entitlement Board stage.

This Review Board would be superimposed upon the existing facilities of the Canadian Pension Commission less the establishment of five Commissioner positions and their support staff.

Pension applicants would not normally appear before the Board. Appearances would be permitted where a decision hinges on a question of fact involving evidence of the applicant, and where his credibility would be the influencing factor. An appearance by the applicant would not be required where:

- (a) The Board is in doubt regarding evidence which could be resolved by further investigation and report of the representatives of the Canadian Pension Commission or the veterans' Advocate;
- (b) The Board is in doubt regarding medical opinions which might be resolved by further medical reports.

The Advocate will make a written submission on the applicant's behalf. The pension applicant may be represented by his advocate before the Board, where necessary."

Your Committee agrees that the above proposal would provide a more independent appellate body than the restructured Commission. Adjudication by such a body would also create a better impression in the minds of the veteran population that justice has been done. For these reasons your Committee recommends that the proposal for the establishment of a Pension Review Board be implemented with the following modifications:

- (1) That an applicant's representative has the right of audience before the Board in all applications.
- (2) That the applicant does not have the right to appear personally before the Board. In cases in which the Board considers that further evidence from the applicant would be helpful that provision be made for the Board to refer the application to an Entitlement Hearing for the purpose of taking the additional evidence from the applicant.
- (3) That the Pension Review Board sit at Ottawa only.
- (4) That appointments to the Review Board be for a term of five years and may be renewed.

## Recommendation 15

This sets out the following procedure for Entitlement Hearings:

- (a) An applicant may proceed to an Entitlement Hearing from a first application, second application or renewal application.
- (b) On receipt of a "Request for an Entitlement Hearing", the Pension Commission staff shall prepare a statement of case setting out a citation of the pertinent legislation, Commission policy, the medical precis to include medical advisers' opinions, if any, together with a Summary of Evidence setting forth all available evidence from the departmental file relating to the claim.
- (c) A copy of the Statement of Case shall be forwarded to the applicant and those representing him, except that where the statement contains information which might be harmful to the health or well-being of an applicant, a copy be provided to his representative only.
- (d) An applicant upon reviewing the statement of case and desiring to proceed, should with the assistance of the Pensions Advocate or other representative, file a "Notice of Readiness" with the Canadian Pension Commission.
- (e) On receipt of the "Notice of Readiness" and a submission, if any, prepared by the Bureau of Pensions Advocates or by other representatives, the Chairman of the Canadian Pension Commission shall then arrange for either:
  - (i) an Entitlement Hearing before three members of the Commission; or
  - (ii) where such a hearing is not deemed practical for reasons of time, travel or inconvenience, a personal appearance by the applicant and his witnesses before a person or persons specially delegated by the Pension Commission to take evidence and hear argument, this to be known as "Examiner's Hearing". In this case the decision would be made by an Entitlement Board on the evidence, provided that the applicant's representative may appear before such Board should he so desire. An applicant may refuse an Examiner's Hearing and insist that his case be heard by an Entitlement Board as set out in (e) (i) above. In such instance the Canadian Pension Commission should not be held accountable for any delay involved.
- (f) Entitlement Hearings will be held in Ottawa and at other locations in Canada as may be practicable. At such hearings the applicant and his witnesses shall appear at public expense.
- (g) Members of the Entitlement Board should be provided, prior to the hearing, with a docket containing the Statement of Case and any written submission prepared by the Bureau of Pensions Advocates or other representative of the applicant.
- (h) All oral evidence, the Advocate's argument on his request, and the argument of an applicant who pleads his own case, should be recorded. When requested, a transcript of the proceedings will be prepared for the Entitlement Board with additional copies for the applicant and those representing him.

- (i) The rules of practice set out in paragraph (g) should apply to an Examiner's Hearing, and the applicant may, if he desires, have his claim presented by an advocate or other representative, in the same manner as that provided for Entitlement Hearings. The applicant and his witnesses shall appear at public expense.
- (j) A record shall be made of all discussions at the Examiner's Hearing and a transcript of evidence prepared which, with supporting documentation would be forwarded to the Head Office of the Commission where such shall be placed before an Entitlement Board for decision.
- (k) The decision of the Entitlement Board shall be in sufficient detail to provide an explanation of the issues, the evidence, the legislation and its interpretation, the evaluation of the claim, the inferences and presumptions, the findings of fact, and conclusions of law. Copies of this decision shall be communicated to the applicant and to those who represent him.
- (l) (i) Instructions for the preparation of documentation required in Entitlement Board proceedings should include each of the following where applicable:
  - (a) *Statement of Case*: This to be prepared by Commission staff and to include:
    - Issues: The claim or claims of the applicant to be separately stated.
    - Summary of Evidence: The evidence pertinent to the issue raised in the application including location and circumstances of service, military medical record and other evidence from file to be given. This summary to be in chronological order and to include all occurrences pertinent to the case which are a matter of record.
    - Citations of pertinent legislation: The appropriate sections of the Act, published interpretations, etc., to be included.
  - (b) *Decisions of Entitlement Boards*: These shall be prepared by the presiding member or another member and shall include:
    - Issues: A statement of the issue or issues, the names of witnesses at the hearing, and the names of any persons consulted by the Board apart from the Commission staff, to be given.
    - Contentions: The contentions of the applicant to be stated in formal terms.
    - Evidence: A condensation of the evidence, both favourable and unfavourable, which is pertinent to and has a bearing on the contentions advanced, diagnosis and clinical findings to be included, with explanation in non-medical terms where possible to be stated.
    - Inferences and presumptions: The inferences and presumptions drawn by the Commission to be explained.
    - The Law: Legislation and published interpretations to be explained, pointing out the statutory and regulatory provisions governing entitlement benefits sought.
    - Evaluation: This to include an explanation or clarification of the reasoning which the Entitlement Board used in arriving

at its findings, including the views of the Board regarding any conflict or inconsistencies in the evidence.

*Findings of fact:* These to include a synopsis of both the basic facts and those which control the disposition of the case, to be stated in concise terms.

*Conclusions of Law:* These to include the deductions of the Board as to whether the applicant is or is not entitled to the benefits claimed; such conclusions to be distinguished from the findings of fact in that they are arrived at through the application of legislation; such conclusions must be consistent with or supported by the findings of fact.

*Decision:* This is to be stated succinctly based on the issues as stated at the outset of the decision.

*General:* A copy of the decision would be made available to the applicant and those who represented him, except where the decision contains statements which might be harmful to the health or well-being of the applicant, in which case the decision will be communicated only to his representative.

#### *Recommendation 16*

That the Commission Chairman institute a quality control by review of statements of case, transcripts and decisions.

#### *Recommendation 17*

That the existing sections 60(5) and 62(5) of the Pension Act which provide that no member of an Appeal Board shall adjudicate upon a case if he has previously sat as a member of the Commission on adjudication of that case, be repealed.

#### *Recommendation 18*

That upon receipt of the Notice of Readiness and a submission, if any, prepared by the Bureau of Pensions Advocates, or others representing the applicant, the Chairman of the Canadian Pension Commission shall then arrange for an Entitlement Hearing.

#### *Recommendation 19*

That the docket prepared for an Entitlement Board decision shall be made available to the Bureau of Pensions Advocates and, where applicable, to others selected to represent the applicant, at least two weeks in advance of an examination or hearing.

#### *Recommendation 20*

- (a) That when an Entitlement Board or an Appeal Board has previously decided an application, the Commission may entertain an application with respect to *a new* condition without leave to reopen.
- (b) That the ground for applying for leave to reopen be changed from, "by reason of evidence not having been presented or otherwise" to:
  - (i) the production of new evidence which may have affected the previous decision had it been presented; or
  - (ii) There is apparent error in procedure, or in fact, or in law.

- (c) Leave to reopen may be granted on the authority of one Commissioner, based on a written submission, with the proviso that if the Commissioner is in doubt he may:
  - (i) arrange to hear the advocate or other representative;
  - (ii) request the Commission Chairman to submit the case for consideration by a quorum of the Commission, or
  - (iii) request the Commission Chairman to arrange for a quorum of the Commission to hear an advocate or other representative.
- (d) Leave to reopen may be refused only after a hearing by a quorum of the Commission as provided in (c) (iii) above.

#### *Recommendation 21*

That Leave to Reopen not be required in regard to applications based on presumption of physical fitness on enlistment, or on the proposed presumption with respect to Regular Force personnel.

#### *Recommendation 22*

Leave to Reopen: Appeals. The Veterans' Organizations propose that there would be no requirement for a "Leave to reopen" procedure before the proposed Pension Review Board. If new grounds or evidence exist, the application for "Leave to reopen" would be the responsibility of the Commission. When the applicant has exhausted his procedural rights before the Commission he would be entitled to have his case reviewed by the Pension Review Board. In a case which had previously been adjudicated upon by the Review Board, and no new grounds or evidence existed, the Review Board would review the case a second or subsequent time, should the applicant's representative request this action. This is believed to be in keeping with the basic concept of the Woods Committee, which was to the effect that there should be no "finality" in applications under the Pension Act."

Your Committee concurs in this proposal and so recommends.

#### *Recommendation 23*

That the Pension Act provide a presumption to the effect that the medical condition of a member of the forces be that as indicated on his documents at the date of enlistment subject to the grounds for rebuttal as provided in the recommendation.

Your Committee concurs in this Recommendation with the modification that "practitioners" referred to in (a) (iv) be defined to mean recognized medical doctors not in the employ of the Canadian Pension Commission and so recommends.

#### *Recommendation 24*

That an affirmative reply given at the time of enlistment in regard to the existence of an injury or disease be considered as a record of the condition only if the report of the medical examination confirmed that a residual disability existed. This recommendation has been modified to read that an affirmative reply to a question concerning a pre-enlistment injury or disease shall be considered a record of the injury or disease only if it is established beyond a reasonable doubt during the applicant's period of service that the condition for which entitlement is claimed relates directly to the condition for which

entitlement is claimed relates directly to the condition in respect to which the affirmative reply was given. Your Committee concurs in the modification and so recommends.

#### *Recommendation 25*

The portion of this recommendation requiring the Bureau of Pensions Advocates to review files is not recommended. It is, however, recommended that the effect of the implementation of Recommendations 23 and 24 be retroactive in principle.

#### *Recommendation 25(a)*

That section 70 of the Pension Act be amended to incorporate the following principles in respect of applications for entitlement and on all matters under the Pension Act including assessments, degree of aggravation and retro-activation, and on appeals therefrom:

1. Onus:

When the applicant has made an application supported by credible evidence which, if uncontradicted, should entitle him to succeed, he shall have discharged his onus.

2. Inferences;

In considering the application initially, and in all subsequent stages of the proceedings, the body or person adjudicating on the application shall draw from all the circumstances of the case, the evidence adduced and medical opinions, all reasonable inferences in favour of the applicant. References to presumptions should be deleted in this context.

3. Preponderance:

When the evidence has been considered and all reasonable inferences drawn in his favour, the applicant shall be entitled to the benefit of the doubt in that his claim may be allowed even though he has not established it by a preponderance of evidence.

#### *Recommendation 26*

That a new section of the Pension Act be adopted to declare the intent and purposes of the Act.

#### *Recommendation 27*

That the following procedure for all applications be established as follows:

1. First application.
2. Second application.
3. Renewal application and further Renewal applications in the discretion of the Commission.

#### *Recommendation 28*

That when an applicant's case has been prepared for Entitlement Hearing he sign a Notice of Readiness.

#### *Recommendation 29*

That the Commission shall entertain a renewal application as a matter of right, and further renewal applications in the discretion of the Commission.

### *Recommendation 30*

See Part II.

### *Recommendation 31*

The application procedure proposed in Recommendation 12 provides that an applicant has the benefit of all procedures including Entitlement Hearing and Pension Review Board in all matters except quantum of pension. Complaints with respect to quantum of pension may be made at a personal appearance under section 7(3) of the Pension Act.

These rights provide the remedies envisaged in Woods Committee Recommendation 31.

### *Recommendation 32*

That application for discretionary benefits be adjudicated on authority delegated to administrative staff for routine matters, and by the Commission for other discretionary benefits.

### *Recommendation 33*

See Part II.

### *Recommendation 34*

That an applicant be permitted to proceed directly from first application to an Entitlement Board.

### *Recommendation 35*

That standard application forms be used where practicable.

### *Recommendation 36*

That in its discretion, the Commission be empowered to consider an application in the form of a written submission without the formality of an official application form. This procedure is already in effect. No further action is required.

### *Recommendations 37 & 38*

That the decision of the Commission be prepared on a standard format sufficient to provide the applicant and those who represent him adequate information concerning the issues, the evidence, the law, the inferences and presumptions, findings of fact and the conclusion of law.

### *Recommendation 39*

That the Bureau of Pension Advocates provide a "general counselling service" for pensioners and applicants in respect of all matters affecting pension.

### *Recommendation 40*

That, where it appears in the judgment of a District Pensions Advocate that there is no basis for a pension claim, the Advocate should accept the responsibility to advise the applicant accordingly, on the understanding that should the applicant wish to proceed the advocate would submit the application in its most favourable light.

*Recommendation 41*

That the Chief Pensions Advocate undertake a survey to determine whether the Bureau of Pensions Advocates be staffed entirely with lawyers.

*Recommendation 42*

That funds be provided through which the Bureau of Pensions Advocates could pay for medical opinions.

*Recommendation 43*

That the Veterans' Bureau be established under a separate part of the Pension Act and it report directly to the Minister; and that it be named the Bureau of Pensions Advocates to be operated as an independent agency charged with the sole responsibility to assist applicants under the Pension Act.

*Recommendation 44*

See Part II.

*Recommendation 45*

That the Pension Act be amended to provide the following changes in the procedure to be followed by the Bureau of Pensions Advocates:

- (a) The responsibility of the Bureau to prepare a Summary of Evidence be discontinued.
- (b) That the Bureau in course of the preparation of a case will only be required to place on the departmental file copies of records maintained by hospitals, doctors, federal government, provincial governments and municipalities.
- (c) Where its services have been requested, the Bureau undertake responsibility to prepare an applicant's claim and to present it in its most favourable light at all stages of adjudication.
- (d) Where a veteran has requested the service of a representative other than the Bureau of Pensions Advocates in connection with an application under the Pension Act, the Bureau should undertake responsibility to assist in the provision to that representative, of such information as he may require in the presentation of the applicant's claim where necessary. This information could include copies of the Summary of Evidence and medical precis prepared by the Pension Commission.

*Recommendation 46*

That the role of the Bureau of Pensions Advocates be clearly delineated as that of pleading the applicant's case.

*Recommendation 47*

That the Bureau of Pensions Advocates be provided with sufficient funds and staff to facilitate its operation.

*Recommendations 48-57*

That authority be delegated to the Senior Pension Medical Examiner in the District Offices and to the officials of the Claims and Review Branch at Head Office to adjudicate upon matters of a routine nature as proposed in Woods Committee Recommendation Nos. 48-57.

### *Recommendation 58*

That the Commission institute quality control procedures to review and evaluate the quality of decisions made by delegated authority.

### *Recommendations 59-60*

That the Claims and Review Branch undertake a recruiting and staff development policy and that sufficient funds be provided to finance the additional responsibilities as foreseen in the foregoing recommendation.

### *Recommendation 61*

That the authority for pension with respect to Regular Force and Reserve Force service be set out in a separate section of the Pension Act, to be administered by the Canadian Pension Commission; this section to contain the following basic principles:

- (1) That the present test of "arose out of and directly connected with service" be retained.
- (2) To provide the following presumptions:

Without limiting the generality of the foregoing, any death, injury, disease, or aggravation thereof shall be deemed to arise out of and be directly connected with such military service if incurred as a result of:

  - (i) any physical training or sport activity authorized and organized by service authorities or performed in the interest of the service or any other act incidental to but directly connected with such activity including transportation between normal place of duty and the place of activity;
  - (ii) being transported in a service vessel, vehicle or aircraft as required by service authorities or being transported by private or public means pursuant to service travel orders or any act incidental to but directly connected with such transportation;
  - (iii) being transported as authorized by service authorities between an isolated or remote area and either the nearest place where public transportation facilities are available or a suitable leave and recreation area;
  - (iv) service in an area where the incidence of the particular disease incurred or aggravated is such as to impose a definite health hazard;
  - (v) an act done as part of service operations training or administration either in accordance with specific orders or in accordance with established service custom and practice, whether or not failure to perform the act might result in disciplinary action;
  - (vi) exposure to any environmental hazard resulting in industrial disease or other disability as a result of service employment.
- (3) Any death, injury, disease or aggravation thereof shall, unless the contrary is shown to be true, be deemed to arise out of and be directly connected with such military service if incurred while on travel duty status at a place other than the normal place of duty.
- (4) An Act may be related to service even though it is not the kind of act generally associated with service operations, training or ad-

ministration. Such act need not be military in its nature, and shall not lose its character of arising out of and being directly connected with such military service because similar acts may be performed by civilians.

#### *Recommendation 62*

That a Standing Advisory Committee representative of the Armed Forces, the Canadian Pension Commission and the Bureau of Pensions Advocates be established. This Committee is now in existence. No further action required.

#### *Recommendation 63*

That the amount for one hundred per cent pension continue to be based on the earning power of a man in the class of the untrained labourer as determined by the average wage of this type of employment in the Public Service of Canada.

#### *Recommendations 64 & 65*

Your Committee recognizes that the veteran who is totally unemployable in the unskilled labour market, whether due to actual loss of faculties or prohibitions arising from physical or mental disability, is considered to be totally disabled. Pensionable disabilities sufficient to cause total unemployability in the unskilled labour market under the present system are all compensated at the same rate of 100% regardless of the nature and extent of the loss of the power to will and to do any normal mental or physical act.

Your Committee recommends that the 100% pension continue to be based on the loss of earning power in the unskilled labour market, but that those 100% pensioners who are exceptionally severely incapacitated on account of pensionable disabilities receive an allowance over and above the 100% pension.

The extent of exceptional incapacity to be determined by medical examination and to be divided into five categories to be based on the existence in a substantial degree of the following factors:

- (a) anatomical loss;
- (b) scarring and disfigurement;
- (c) loss of enjoyment of life;
- (d) pain and discomfort;
- (e) expected shortening of life span.

The Medical Advisory Branch of the Canadian Pension Commission should publish a directive setting forth guidelines to be followed in determining into which category an exceptional incapacity falls.

The amount of the allowance to be:

Category 1	\$ 700 per annum
Category 2	\$ 1,400 per annum
Category 3	\$ 2,100 per annum
Category 4	\$ 2,800 per annum
Category 5	\$ 3,500 per annum
Estimated cost	\$2,500,000 per annum

The exceptional incapacity allowance will be paid as a matter of right to those 100% pensioners who are eligible. The right to the allowance will be determined in the same manner as in entitlement to pension matters. This right will not be affected by the pensioner's means or his degree of rehabilitation.

The estimated annual cost of this recommendation is \$2,500,000 which is the same amount as that estimated for the proposal of the Veterans Organizations.

*Recommendation 66*

That section 25 of the Pension Act remain in its present form.

*Recommendation 67*

That the Canadian Pension Commission make fuller use of section 25.

*Recommendation 68*

That, in applications under section 25, the calibre of service of the applicant need not necessarily be a factor, and the person on whose behalf application is made need only meet the ordinary standards of service.

*Recommendation 69*

That applicants under section 25 be granted the same procedural rights as applicants for pension entitlement.

*Recommendation 70*

That the procedure for applications for compassionate pension be set out in an Administrative Instruction.

*Recommendation 71*

That application for compassionate pension may be appealed to the Pension Review Board.

*Recommendation 72*

That the purpose of compassionate pension be set out in a "Supplementary Benefit" Instruction.

*Recommendation 73*

That where compassionate pension under section 25 is awarded to a widow, her pensionable children be eligible under the Children of War Dead (Education Assistance) Act. This recommendation has now been implemented. No further action required.

*Recommendation 74*

Set out in Part II.

*Recommendations 75 & 76*

(a) That a separate section be included in the Pension Act to provide that pension be awarded for a disability which, in whole or in part, is an extension of a pensionable disability, or which, while not anatomically related to the pensionable disability, is considered to be caused by that disability wholly or partly. Such disability is hereinafter referred to as a "consequential disability".

(b) That pension for the consequential disability be not disallowed on the ground that the activities and surroundings of the pensioner at the time of the accident could be considered as inappropriate, having regard to prohibitions which may be said to apply to a person with the type of disability for which pension was in payment.

(c) That consideration be given by the Canadian Pension Commission to making provision in the Table of Disabilities that in the assessment of a consequential disability for pension, the following factors be taken into consideration where applicable:

- (i) the degree of aggravation of the consequential disability which can be attributed to the pensioned condition;
- (ii) any increase in the disability of the single organ where its function has been affected by an additional disability regardless of whether the additional disability is consequential upon the original disability.

#### *Recommendation 77*

That, where a consequential disability is deemed to have been caused by the pensioned disability, the assessment for the consequential disability should carry a separate entitlement.

#### *Recommendation 78*

This recommendation proposed pension for a second disabling condition which was not consequential upon a pensionable condition. The recommendation was modified to provide that, where pension has been awarded for the loss or the permanent loss of the use of one "paired organ", the subsequent loss or the impairment of the efficiency of the other corresponding organ from any cause unrelated to service shall be pensioned at 50 per cent of the rate it would have been pensioned if the loss or impairment had been attributable to service.

#### *Recommendation 79*

That where a pension is awarded for no useful vision in one eye and the pensioner loses the sight of his other eye, pension be awarded at the rate for total blindness, even though the loss of the sight in the second eye is not consequential upon the pensioned condition.

#### *Recommendation 80*

That the Pension Commission prepare a special list of "necessities" in regard to the qualification for Attendance Allowance for blinded persons, for inclusion in the Table of Disabilities; and that emphasis be given to the special problems of the blind in respect to:

1. constant companionship,
2. recreational activities,
3. transportation,
4. communication by the written word and by the spoken word, bearing in mind that facial expression and hand signals are meaningless to this group.

#### *Recommendation 81*

That the totally blind be placed in the CONSTANT category in the Table of Disabilities and be granted attendance allowance at the maximum rate. Under current rates this would be \$3000 per annum.

#### *Recommendation 82*

See Part II.

#### *Recommendation 83*

This recommendation provides that specified revision be made in the special categories for attendance allowance for amputees under the Table of Disabilities. The recommendation has been modified to provide that the Table of Disabilities be amended to make it clear that all levels contained therein, other than maximum or minimum amounts and general subdivisions, are to be used as guidelines only, and that they are not fixed and absolute. That the actual amount of the award be made in keeping with the extent to which the individual is dependent, based upon careful examination and unbiased judgment.

#### *Recommendation 84*

That the attendance allowance for the bilateral Syme's amputee be fixed at \$1200 per annum.

#### *Recommendation 85*

That provision be made:

- (1) that attendance allowance remain in payment for those in the maximum rate group while undergoing treatment in hospital.
- (2) that the provisions of section 33(3) remain in force to provide for the continuation of attendance allowance to the blind who are not in the maximum rate group while in hospital.
- (3) that the Treatment Regulations continue to provide such benefits for paraplegics who are not paid attendance allowance at the maximum rate.

#### *Recommendation 86*

That attendance allowance for those not included in Recommendation 85 continue for one month after the month in which the patient is admitted and may continue beyond this period at the discretion of the Commission.

#### *Recommendation 87*

That the Pension Act be amended to state unequivocally that attendance allowance is not considered as part of pension.

#### *Recommendation 88*

See Part II.

#### *Recommendation 89*

That where pension is in payment for a pensioned condition and the pensioner has received one or more automatic increases, and subsequently is granted additional entitlement for a condition ruled as consequential upon the

pensionable condition, an assessment be made for the consequential disability wherever this is possible, and any such assessment be added to the existing assessment and be reflected in increased pension payment, regardless of whether part of that payment was approved as an automatic increase with age.

#### *Recommendation 90*

The Woods Committee recommendation proposed the repeal of sections 20, 21 and 22 from the Act, which would have the effect of permitting a pensioner or widow to retain the full amount of any award of legal damages or Workmen's Compensation and continue to receive pension payments without deduction.

This recommendation has been modified to the effect that the sections be retained in the Act, but, that, in capitalizing the amount of damages recovered, one half will be ignored, and to this extent will not affect the pension in payment.

#### *Recommendation 91*

See Part II.

#### *Recommendation 92*

That a basic minimum 50% pension be provided for former Hong Kong Force members and other members of the Canadian Forces or the forces of the United Kingdom, the British Commonwealth and Allied Nations who were domiciled in Canada at the time of their enlistment, who were prisoners of war of the Japanese, who apply and have assessable degrees of disability.

#### *Recommendation 93*

That Hong Kong veterans and the other veterans referred to in Recommendation 92 whose death occurred prior to the legislative implementation of Recommendation 92, will be presumed to have died from causes attributable to their war service.

#### *Recommendation 94*

That the operation of the Medical Advisory Branch be expedited as follows:

- (a) The Medical Advisers be freed of responsibility in regard to supervision and clerical work, to permit them to concentrate on the development of their function of providing medical opinions for the Commission.
- (b) A specially trained clerical section be established in the Medical Advisory Branch under a qualified supervisor, reporting to the Chief Medical Adviser; this section to operate under the following principles:
  - (i) Specialized groups within the section would be trained to deal with various medical areas.
  - (ii) The staff of this section would be responsible for screening all files prior to submission to a Medical Adviser, and to flag pertinent documents.
  - (iii) The staff would prepare précis of the non-medical aspects from a review of the documentation, including such matters as the previous rulings of the Commission and the service history.

- (iv) Where appropriate, the staff would prepare précis outlining the medical history of the case to facilitate the task of the Medical Adviser in his review.
- (c) The existing system under which Medical Advisers are permitted clerk-stenographers to be retained except that, over a period of time, the work now being done by these clerk-stenographers be transferred to the proposed clerical services section with the object of revising the responsibilities of these clerk-stenographers to those of a private medical secretary.

#### *Recommendation 95*

That the role of the Medical Adviser be restricted to that of providing medical opinions to the Commission.

#### *Recommendation 96*

That the Medical Adviser prepare a "medical précis" based on the following principles:

- (a) The medical précis shall not be confidential to the Commission only, and shall be placed on file and be available for examination by those who have access to departmental files.
- (b) The précis shall furnish an opinion from the Medical Adviser where appropriate with respect to the medical aspects of the pension application.
- (c) Where such opinion is being written in connection with an application previously dealt with by the Medical Advisory Branch, the précis shall either refer to, or shall contain a condensation of, all previous advice on the case given by the Medical Advisory Branch.
- (d) The précis shall not contain opinion as to whether or not an applicant for entitlement can qualify under the Act or the policies of the Commission.

#### *Recommendation 97*

That a procedure be established within the Commission to determine which cases should be submitted to the Medical Advisory Branch for opinion.

#### *Recommendation 98*

That there be no change in the wording of section 1 of the Pension Act, i.e., that it "may be cited as the Pension Act".

#### *Recommendation 99*

That section 8 of the Pension Act be retained, i.e., regulations with respect to procedure.

#### *Recommendation 100*

That the Commission publish Medical Advisory Branch Directives setting out policy with respect to the operation of the Branch. These would include:

- (a) The existing Table of Disabilities issued in the form of one or more of such Medical Advisory Branch Directives.
- (b) Full information with respect to the basis upon which Attendance Allowance, Clothing Allowance, and other supplementary benefits are paid.

- (c) Policies with respect to the application of medical opinion in regard to entitlement claims, where feasible. These Medical Advisory Branch Directives, numbered and indexed for ready reference, should be issued to District Offices of the Commission, Veterans' Bureau, Department of National Defence and Veterans Organizations and should be available to applicants and others acting on their behalf.

#### *Recommendation 101*

That the Commission publish Pension Law Directives, setting out Commission policy in respect of adjudication on pension claims. These should be issued for each basic area into which pension claims can be divided. The existing policy statements and directives should be rewritten and included in them. Unwritten policies which have been followed by the Commission should be set out in these, where feasible, and when new policies are adopted these should be issued in the form of such Directives as required.

There should be a system of numbering and indexing for ready reference and distribution and availability should be on the same scale as that recommended for the Medical Advisory Branch Directives.

#### *Recommendation 102*

That the Commission issue Supplementary Benefit Directives, setting out the policy under which benefits under the Act, other than basic pension entitlement, may be granted, including dependent parents, remarried widows, unpaid balances, administration of pension, division, last illness and burial grants, compassionate awards, and retroactive awards. Such Supplementary Benefit Directives should be made available and distributed on the basis similar to Medical Advisory Branch Directives. Like the others, they should be numbered and indexed.

#### *Recommendation 103*

That the Commission issue Administrative Instructions governing its general administration. These instructions should be numbered and indexed but ordinarily would not be distributed outside of the Commission.

#### *Recommendation 104*

That a bilateral amputee receive clothing allowance at the maximum rate for one amputation plus on-half of the maximum rate for a second pensionable amputation.

#### *Recommendation 105*

That a pensioner who must wear specially-tailored garments because of a pensionable disability be paid a clothing allowance.

#### *Recommendation 106*

That a proportionate pension be paid to a widow where a pensioner in receipt of pension of less than 48% dies.

#### *Recommendation 107*

See Part II.

#### *Recommendation 108*

See Part II.

*Recommendation 109*

That pension continue to be paid for three months for a wife, child or parent at the rate in payment to the death of the pensioner in the case of pensions which were in payment in Classes 1 to 9 of Schedule "A" only.

*Recommendation 110*

That Attendance Allowance continue to be paid for a period of one month following the death of the pensioner and in respect of whom additional pension is payable for a wife or child who was living with and providing attendance for the pensioner.

*Recommendation 111*

See Part II.

*Recommendation 112*

See Part II.

*Recommendation 113*

That the Act be amended to provide that in an application under section 34(5) or section 34(6) the following practice be adopted:

- (a) It should not be necessary for the Commission to locate or contact the spouse involved in the first marriage.
- (b) A pensioner should be required only to produce a certificate or other satisfactory evidence of the previous marriage that constitutes the bar to marriage and show to the satisfaction of the Commission, by statutory declaration, that no evidence of the termination of such marriage by death, divorce or annulment has been found upon reasonably extensive inquiry.
- (c) The Commission should accept the refusal by any person competent to issue a marriage licence as acceptable proof of the existence of a bar to marriage for the purposes of section 34(5).

*Recommendation 114*

That the existing requirement under Commission policy for a review every three years of cases where additional pension is paid under section 34(5) be discontinued.

*Recommendation 115*

That the staff of the Canadian Pension Commission and the Department of Veterans Affairs be authorized to counsel persons who may be able to qualify for benefits under sections 34(5) and 34(6) of the Act, to assist them in the completion of an application, where appropriate.

*Recommendation 116*

That an award of pension be retroactive for a period of three years prior to the date of grant or from the date of application, whichever period of time is the lesser, and it may be extended under certain circumstances at the discretion of the Commission for a further period of two years.

*Recommendation 117*

See Part II.

### *Recommendation 118*

See Part II.

### *Recommendation 119*

That the Commission staff be required, in preparing applications for decisions of the Commission, to request a decision in all instances concerning the possibility of retroactive pension, and if the full period of retroactivation is not granted, the Commission be required to give the reasons therefor, as part of its decision.

### *Recommendation 120*

See Part II.

### *Recommendation 121*

See Part II.

### *Recommendation 122*

That the Commission ensure that, where practical, a pension medical examination be carried out on a pensioner undergoing treatment in hospital for a pensionable condition, and that if such examination results in an increase in assessment, consideration be given to a retroactive award for such period as may be determined that pensioner has had an increase in disability.

### *Recommendations 123 & 124*

That pensions paid for disabilities arising out of service subsequent to World War I will be stabilized after the pensioner reaches the age 55, if, and when, they have been unchanged for 3 years or more.

### *Recommendation 125*

That the Act be amended to provide as follows:

- (a) Where a dependant's right to be maintained has been established by court order the Pension Commission may divide a pension and pay part of same to a dependant where the pensioner and his dependants are living separately, and where it is apparent that the pensioner is not maintaining the dependant.
- (b) If a court order has been obtained, the Commission may pay pension direct to a dependant in the amount of the court order, such amount to be made up of the full amount awardable under the Pension Act as additional pension for the dependant, with the balance from the pensioner's basic pension, not to exceed twice the amount of additional pension.
- (c) Where a court order is less than the total amount of additional pension payable to the dependant under the Pension Act, the Commission may, in its discretion, pay a pension direct to the dependant in excess of the court order, but in no circumstances more than the amount provided for in the Pension Act as additional pension for the dependant.
- (d) Where a small pension is in payment and a pensioner requests that the additional pension for a dependant, plus an equal amount from his basic pension, should be paid direct to a dependant, the Com-

mission may act on this request without having to determine whether the pensioner pays additional monies from other sources to his dependant, as evidence that he is properly supporting her.

*Recommendation 126*

That the authority to pay divided pension be removed from section 18 of the Act and be incorporated into section 34(1), which should be expanded to authorize payment to a dependant of part of a pensioner's basic pension, if warranted.

*Recommendations 127 & 128*

That "improper conduct" be removed as a bar to the award of pension to dependants following the death of the veteran.

*Recommendation 129*

That applications from or on behalf of Newfoundland veterans continue to be processed on the basis that the Canadian Pension Commission shall entertain an application after it has been considered by the Ministry of Social Security of the British Government, and that to the extent authorized by the British Authorities, the Canadian Pension Commission and the Department of Veterans Affairs, including the Veterans' Bureau, assist the applicant in the preparation of his application to the British Ministry, and that the Canadian Pension Commission take steps as may be possible to minimize delay where a claim is submitted for decision under the Canadian Pension Act.

*Recommendation 130*

That where after two years, it is not possible for the British Ministry of Social Security to process the claim of a Newfoundland veteran for any reason, the Canadian Pension Commission should proceed to consider the claim as if the applicant's service had been in the Canadian Forces.

*Recommendation 131*

See Part II.

*Recommendation 132*

That, in making appointments to the Commission, the present practice of appointing professionally trained personnel including medical doctors, lawyers, recently retired ex-members of the peacetime forces, and persons who possess qualifying experience in veterans' work and are truly representative of veterans interests, be continued, and that in making such appointments a practical ratio of the appropriate professions be considered in the light of the requirements of the Canadian Pension Commission.

*Recommendation 133*

See Part II.

*Recommendation 134*

That section 3(13) be amended to provide that the Chairman of the Commission shall have control and direction over the disposition of staff assigned to the Commission by the Department.

### *Recommendation 135*

That the Chairman of the Pension Commission be responsible to develop and operate the following quality control systems within the Commission:

- (a) a review of decisions made by Senior Pension Medical Examiners and officials of the Claims and Review Branch in regard to discretionary benefits; (See Recommendation 58);
- (b) a review of the decisions made by Commissioners in regard to entitlement claims, by examinations of the documentation dealing with pension claims including the statement of case, the transcript of Examiner's Hearings and Entitlement Board Hearings, the submissions on behalf of applicants and the decisions of Commissioners;
- (c) a review of the decisions made by the Claims and Review Branch and the Commissioners in regard to discretionary benefits by means of a spot-check of cases and an examination of the transcript in regard to personal appearances under section 7(3) of the Act.

### *Recommendation 136*

That the Chairman of the Pension Commission take such steps as may be deemed necessary to ensure the maximum standardization of adjudication within the terms of the legislation, and that, in this respect, the following be instituted:

- (a) a filing system be established to record a digest of relevant comments and decisions which would be of value to Commissioners and decision-making staff in achieving familiarity with accepted policies;
- (b) memoranda be issued to Commissioners, or staff members on an individual case basis, where any of the quality control procedures have indicated variance with Commission standards;
- (c) general directives be issued where the Chairman considers such are required in regard to policies or procedures, with the stipulation that where interpretation is required, such be ascertained by the Chairman in any manner consistent with the Act and the policy of the Commission.

### *Recommendation 137*

See Part II.

### *Recommendation 138*

That the Act be amended to make provision for posthumous assessment for the purpose of determining a widow's eligibility for pension under section 36(3) of the Act, as follows:

- (a) where a person who has served in the Armed Forces dies and leaves a dependant, such dependant may, where sufficient grounds exist, submit an application to the Commission for an entitlement ruling and if entitlement is granted, but it is ruled that the death was not attributable to service, the Commission shall be empowered to approve assessment posthumously;
- (b) where a person who has served in the Armed Forces has made application for pension and dies before entitlement is granted, or before an assessment is approved, the Commission shall give a ruling on entitlement, and shall be empowered to approve an assessment; and

- (c) where a pensioner dies and his assessment is less than 48%, the Commission may entertain an application after his death for an increase in assessment, and may be empowered to approve such increase.

*Recommendation 139*

That the Canadian Pension Commission publish guidelines setting out permissible assets, maximum income ceilings and other factors which govern decisions of the Commission in regard to applications under those sections of the Act where an award may be made at the discretion of the Commission and where the decision depends upon the financial circumstances of the dependant or the pensioner. The guidelines should be broad and flexible in order that they will not restrict the statutory discretion which is given to the Commission to meet individual circumstances.

*Recommendation 140*

That the Canadian Pension Commission publish a "Suggested Expenditure" guide setting out permissible allowances for food, shelter, clothing and other necessities on an adjustable basis for each geographical area, to be used in determining eligibility for a maximum rate provided under the Act, or at a lesser rate if appropriate. This guide to be broad and flexible to facilitate the achievement of reasonable uniformity in decision-making, but without inhibiting the Commission's statutory discretion.

*Recommendation 141*

That "dependent condition" be defined to mean the condition of being without income or assets sufficient to provide maintenance. Such assets are not to include the home in which the applicant or pensioner resides.

*Recommendation 142*

That no information from a departmental file be released unless:

- (1) the veteran has given his written consent to its release; and
- (2) the release of the information is in the veteran's best interests.

*Recommendation 143*

That the statutory exemption from income tax for payments made under the Pension Act be continued.

*Recommendation 144*

That subsections (1) and (2) of section 33 of the Pension Act, which provides for a reduction of pension while a pensioner is in receipt of a treatment allowance from the Department of Veterans Affairs, be deleted so that this provision in the Pension Act will conform to the Veterans Treatment Regulations which state that pension if in payment at a rate equal to or exceeding the treatment allowance, will remain in payment in lieu of treatment allowance when the pensioner is undergoing treatment for his pensionable disability.

*Recommendation 145*

That the practice of deducting \$15.00 a month from treatment allowance for pensioners in Classes 3-21 while in hospital be discontinued.

*Recommendation 146*

To add a proviso to section 45(2) of the Pension Act that the Canadian Pension Commission may restore the pension of a woman in cases which it considers to be specially meritorious:

- (1) in which the five-year period has expired;
- (2) where the marriage is dissolved or the woman judicially separated from bed and board.

*Recommendation 147*

That the Civilian War Pensions and Allowances Act be amended to remove the time limit of one year during which application must be made following the occurrence of a disability in respect of which pension is claimed.

*Recommendation 148*

That the Pension Act be amended to provide that the definition of "theatre of actual war" shall state specifically that it refers to the period of time during which a member of the forces could engage or be engaged by the enemy, and terminate, in the case of World War I, on November 11th, 1918, and for World War II, on May 9, 1945 for the European Theatre and on August 14, 1945 for the Pacific Theatre

and

with respect to service in Korea "theatre of actual war" means "any service of the member of the Canadian Forces from the time of his departure at any time prior to July 27, 1953 from Canada or the United States of America including Alaska, to participate in military operations undertaken by the United Nations to restore peace in the Republic of Korea, until

- (i) he next returns to Canada or the United States of America including Alaska;
- (ii) he is posted to a unit which is not participating in such operations;
- (iii) the unit with which he is serving, having ceased to participate in such operations, arrives at the place to which it has been next assigned, or
- (iv) October 31st, 1953

whichever is the earliest.

## PART II

Woods Committee recommendations which your Committee does not recommend for implementation:

### *Recommendation 9*

That an individual who appears before one or more Commissioners for a personal hearing on matters of quantum, and his witnesses, if any, be paid the cost of transportation and be reimbursed for expenses in the same manner as applicants and witnesses appearing before the existing Appeal Boards of the Commission.

### *Recommendation 30*

That first, second and renewal applications for entitlement be approved or rejected by an individual Commissioner acting in the capacity of an "Entitlement Officer", thus providing that such Commissioner be empowered to act for the Commission in the disposal of such application.

### *Recommendation 33*

That first, second and renewal applications for an increase in the degree of assessment or for an increase in the degree of aggravation be adjudicated by one Commissioner.

### *Recommendation 44*

The Woods Committee Recommendation 44 that the Bureau of Pensions Advocates be relieved of the necessity of providing information to the office of the Minister of Veterans Affairs.

### *Recommendation 74*

That a compassionate pension under section 25 may be awarded in excess of the maximum assessment of 350% as provided in Recommendation 65(4).

### *Recommendation 82*

That the Act be amended to provide that attendance allowance be paid to pensioners only if their need of attendance is conditional, wholly or in part, upon a pensionable disability.

### *Recommendation 88*

The Table of Disabilities provides for automatic increases in pension of 10% upon reaching the ages of 55, 57 and 59 for those in receipt of pension at the rate of 50% or more in respect of amputation or disabilities due to or arising out of wounds or injuries, the result of direct action with the enemy. The Woods Committee recommended that these provisions should apply to all pensionable conditions arising from injuries or accidents, and that the existing 80% ceiling be removed to provide up to three increases to a maximum of 100%. The estimated annual cost of implementation of this recommendation was given as \$3,734,050.

The Veterans' Organizations suggested a modification, to provide up to three increases; these to be available only to the gunshot wound group and to amputations from injury or accident. The estimated cost was given as \$1,500,000 per annum when all eligible pensioners had reached the age of 59. The cost of implementation during the first year was estimated at \$500,000.

The existing provisions are discriminatory, in that they do not apply to the pensioners in the 80% and 90% class, and are restricted only to gunshot wounds and amputations which have arisen due to direct action with the enemy. It is recommended by the Veterans' Organizations that increases be provided for the gunshot wound groups and to amputations from injury and accident as follows:

60%	to	90%
70%	to	100%
80%	to	100%
90%	to	100%

#### *Recommendation 91*

That the provisions of Recommendation 90 be retroactive to the extent that the total of amounts recovered by the Crown or deducted from pension under these sections in past years, be refunded to the pensioner or widow, where practicable.

#### *Recommendation 107*

That pension continue for a dependent parent, brother or sister on pensioner's death.

#### *Recommendation 108*

That pension for a child undergoing a course of instruction be continued to age 25.

#### *Recommendation 111*

That section 36(5) be amended to provide that a woman who has been divorced, judicially separated or separated pursuant to a written or other agreement from a pensioner who has died shall be entitled to pension if she has been awarded alimony or an alimentary allowance by court order or under the terms of a separation agreement in an amount not less than that she was receiving by agreement or court order, and that this amount be adjusted commensurate with any revisions in the rate of pension under Schedule B of the Act.

#### *Recommendation 112*

That Section 36(6) of the Act be deleted so that a widow who has been divorced, judicially separated or separated from a pensioner pursuant to a written or other agreement but who has not been maintained by him, and had not been awarded alimony or alimentary allowance by court order or under the terms of agreement, would not be able to request the Commission to decide whether she would have been entitled to an award or other allowance had she made application therefor while her husband was alive.

#### *Recommendation 117*

That the Act be amended to provide that, where a delay in an award of pension has occurred through an error in administration, procedure or other performance of the Canadian Pension Commission or an appellate body, excluding the exercise of discretion in adjudication, entitlement may be granted from the date of the original application, notwithstanding the limitation of five years as proposed in Recommendation 116.

#### *Recommendation 118*

That the Act be amended to authorize the Commission to grant retroactive pension to an applicant from the date of application, or five years from the date of grant as provided in Recommendation 116, notwithstanding any evidence to the effect that the applicant was responsible for the delay.

#### *Recommendation 120*

That the Act be amended to provide authority for the Commission to award retroactive pension for increases in the degree of aggravation of a disability or increases in an assessment of a disability within the same limits as entitlement decisions.

#### *Recommendation 121*

That the Act be amended to provide that, where a retroactive award of pension is made, and the Commission decides that the applicant did not have an assessable degree of disability during the retroactive period in the same extent as the assessment which is given him on the basis of a medical examination at the time of the award, the Commission shall not be allowed to reduce the assessable degree of disability for the retroactive period by more than 50% of the amount of assessment deemed to exist at the date of the award.

#### *Recommendation 131*

That rates paid to a special group of pensioners (approximately 6) who were originally pensioned by the Newfoundland Commission Government and payment of whose pension was accepted by the Canadian Government, be the subject of the same comparative pension increases as the basic rate of pension under the Canadian Pension Act. This recommendation was not accepted by the Government. The Veterans' Organizations are of the opinion that the recommendation is fully justified, but that it is the responsibility of a jurisdiction other than the Canadian Pension Commission. Accordingly, representations will be made by Veterans' Organizations to the Department of Finance in regard to this recommendation.

#### *Recommendation 133*

That Commissioners be appointed by the Governor in Council on recommendation of the Chairman of the Canadian Pension Commission.

#### *Recommendation 137*

That the Act be amended to provide that Commissioners, except an *ad hoc* Commissioner, not require reappointment at ten-year intervals, but any Commissioner, including an *ad hoc* Commissioner, may be removed for cause by the Governor in Council.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 12 to 23 of the First Session and 2 to 13 of the Second Session of the Twenty-Eighth Parliament*) is tabled.

Respectfully submitted,

LLOYD FRANCIS,  
(Chairman)











